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REPORT FROM THE COMMISSION

on the application in 2015 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

The effective implementation of the public's right to access documents held by the EU institutions is one of several means by which the EU seeks to increase transparency and accountability towards its citizens.

In 2015, the Commission continued to put into practice its strong commitment to increased transparency in several ways.

By the end of December 2015, information had been published about more than 7,000 bilateral meetings between Commissioners, Cabinet members and Directors General, and interest representatives. This allows citizens and stakeholders to know who is meeting the Commission and on which subjects.

A new, improved version of the Transparency Register was launched in January 2015. The Commission's Decision that Commissioners, Cabinet Members and Directors General only meet interest representatives who feature on the Transparency Register has considerably increased the visibility of entities seeking to influence policy formulation and implementation at EU level. The Register continued to grow steadily and currently contains over 9,300 entries, having attracted over 3,600 new registrants since January 2015[1].

During the second part of 2015, the Commission also implemented a good part of its Better Regulation Agenda presented in May 2015, with the objective of ensuring that EU policies to achieve their objectives in the most effective, efficient and transparent way. The Inter-institutional Agreement on Better Law-Making which the Commission proposed last year and was recently adopted reflects a shared commitment by the European Parliament, the Council and the Commission to improve transparency throughout the cycle of European decision-making. The Commission has also set up new stakeholder feedback mechanisms at very early stages in the preparation of proposal by publishing roadmaps and inception impact assessments.

The Commission honoured its commitment made in November 2014 to inject more transparency into the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the United States. As from January 2015, it has been publishing and updating, on a regular basis, a list of TTIP documents and making public more negotiating texts and detailed reports of the negotiating rounds.

Within this broader transparency agenda, the right of access to documents, laid down in Article 15(3) of the Treaty on the Functioning of the European Union and Regulation 1049/2001, continued to be one of the main cornerstones of the Commission's approach to transparency. It complemented the Commission's proactive publication, in parallel, of a wealth of information and documentation on its various webpages.

This report, drawn up pursuant to Article 17(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2], provides information on how the Commission applied the access-to-

[1] Based on figures extracted on 3 March 2016.

[2] Official Journal L 145, 31.5.2001, p. 43

documents rules in 2015. It includes data on the number of access requests and the disclosure rate, and is based on statistical data which are summarised in annex[3].

The statistics reflect the number of applications and replies[4] and not the number of documents requested or released, which were far more numerous. Indeed, applications may cover a single document but more frequently a multitude of documents, or even entire files concerning a specific subject or procedure.[5]

The importance of the right of access to documents within the Commission's transparency policy is immediately apparent from these statistics, as the requested documents were fully or partially disclosed in 84% of cases at the initial stage, and wider or even full access was granted in 41% of cases reviewed at the confirmatory stage.

1. Registers and Internet Sites

1.1. In 2015, 18,945 new documents[6] were added to the register of Commission documents[7] (see annex – table 1).

1.2. In 2015, the Commission's public register covered the following documents: COM, SEC, C, JOIN, SWD, OJ and PV series[8]. No sensitive documents[9] were created or received by the Commission in 2015, that would fall within one of these categories of documents.

1.3. The following table shows the statistics for 2015 on consultation of the Access to Documents website on EUROPA[10].

	Unique visitors	Visits	Pages viewed
Total	15,525	18,939	23,324
Monthly average	1,294	1,578	1,944

2. Cooperation with the other Institutions subject to the Regulation

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3 Statistics presented in this Report are based on figures extracted from the GESTDEM application on 11 April 2016.

4 Applications for access to documents which were already publicly accessible at the time of the request are not included.

5 In the latter case, applications are usually dealt with in successive phases, each covering an amount of documents that can be dealt with within the deadlines under the Regulation.

6 A similar number as in 2014 (19,755).

7 Bringing the total number of documents in the Document Register up to 20.548.973 by the end of 2015.

8 COM: legislative proposals by the Commission and related documents; SEC: residual category with internal Commission documents; C: autonomous acts of the Commission; JOIN: acts jointly adopted by the Commission and the High Representative; SWD: Commission staff working documents; OJ: agendas of Commission meetings; PV: minutes of Commission meetings.

9 For the purposes of Regulation No 1049/2001, sensitive documents are documents classified as "très secret/top secret", "secret" or "confidential" (see Art. 9(1) of the Regulation).

10 http://ec.europa.eu/transparency/access_documents/index_en.htm

The three institutions (European Parliament, Council and Commission) held regular technical meetings, at administrative level, to share experiences, develop best practices and ensure a consistent application of the Regulation.

3. Analysis of Access Applications

3.1. In 2015, the inflow of access-to-documents requests at the **initial stage** increased by more than 8% (6,752 applications in 2015 compared to 6,227 in 2014). The number of initial replies based on Regulation 1049/2001 similarly increased, from 5,637 in 2014 to 5,819 in 2015 (see annex – table 2).

3.2. As regards **confirmatory applications** for a review, by the Commission, of the initial full or partial refusal, the number of applications received slightly decreased (284 new confirmatory applications in 2015 against 300 in 2014). Accordingly, the number of confirmatory replies issued also decreased, from 327 in 2014 to 291 in 2015 (see annex – table 5).

3.3. The Directorate-General for Health and Food Safety received the highest proportion of initial requests (9.2%[11] of the total), whilst the Secretariat General occupied the second rank, with a decrease from 11.6% in 2014 to 8.7% in 2015. Initial requests for documents held by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs increased from 5% to 8.6%, putting it in third place. Four other Directorates-General received a number of requests representing more than 5% of total requests (Competition, International Cooperation and Development, Environment, and Taxation and Customs Union). The remaining Directorates-General account for less than 5% of all initial requests (see annex – table 10).

3.4. Most applications in 2015 originated from citizens that did not specify their socio-professional profile (23% of the total number of applications). Amongst those who did, the academic world was the most active category of applicants, accounting for 22.3% of initial applications (in comparison with 19.8% in 2014), whilst the third rank was occupied by civil society, with 15.6% of total applications. Applications by lawyers, occupying the fourth place, decreased significantly, from 18.3% in 2014 to 13% in 2015 (see annex – table 8).

3.5. Regarding the geographical breakdown of initial applications, the largest proportion continued to originate from Belgium (26.8%) and Germany (11.7%). Applications from Spain increased significantly, from 6.2 in 2014 to 9.9% in 2015, putting it in third place. That Member State was followed by France and the United Kingdom (both 7.6%), Italy (7.3%) and the Netherlands (5.5%). None of the remaining Member States exceeded 5% of applications (see annex – table 9).

4. Application of Exceptions to the Right of Access

[11] Percentages in the narrative part of the Report are rounded to the closest decimal.

4.1. In 2015, full disclosure at the initial stage continued to be given in more than two out of every three cases with a slight decrease as compared to the previous year (68.8%, compared to 72.8% in 2014)[12]. The percentage of partially positive replies remained largely identical (15,3% in 2015 compared to 15.4% in 2014), up from a relatively lower percentage in the three previous years (7.6%, 8.6% and 10.7% in 2011, 2012 and 2013 respectively). In 2015, 15.9% of the applications were rejected (against 11.9% in 2014), i.e. a percentage similar to previous years (16.9% and 14.5% in 2012 and 2013 respectively) (see annex – table 3).

4.2. The number of cases where, following a confirmatory application, the initial (full or partial) refusal was reversed at confirmatory stage remained stable at 41.3% (the corresponding percentage in 2012, 2013 and 2014 was 43%, 44% and 43%). In 31.7% of cases, wider (though no full) access was granted than at initial level (representing an increase compared to the three previous years (when it vaccillated around 24%). The number of confirmatory applications giving rise to a fully positive confirmatory reply was lower (9.6%) than in previous years (when it varied between 15 and 20%)[11] **(**see annex – table 6).

4.3. As regards the exceptions invoked, the protection of privacy and the integrity of the individual continued to be the main ground for (full or partial) refusal at the initial stage (with an increase from 21% in 2014 to 29.4% in 2015[11]). It came ahead of the exception aimed at protecting the purpose of inspections, investigations and audits, which was invoked less frequently than in previous years (20.9% in 2015, against 25.3%, 23.6% and 25% in 2012, 2013 and 2014 respectively) (see annex – table 4).

4.4. The protection of the decision-making process, occupying the third place, was also less frequently invoked (20.3% in 2015, against 25.2%, 27.1% and 22.1% in 2012, 2013 and 2014 respectively). The relative use of the protection of commercial interests as an exception remained almost identical (14.8% in 2015 against 14.9% in 2014), whilst the exception based on the protection of international relations was less frequently invoked than in previous years (4.9% in 2015, against 6.2% and 7.3% in 2013 and 2014 respectively) (see annex – table 4).

4.5. At confirmatory level, the most frequently invoked main ground for confirming a (full or partial) refusal of access was, as in previous years, the protection of the purpose of inspections, investigations and audits. Its relative use increased from 33% in 2014 to 37.7% in 2015. The application of the protection of the decision-making process as an exception increased slightly from 14.5% in 2014 to 16.4% in 2015, but was stable as compared to previous years, whilst the relative importance of the 'privacy and integrity of the individual' exception as a main ground for refusal decreased from 18.1% in 2014 to 15.6% in 2015.

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[12] Due mainly to a stricter observance of the applicable data protection rules, in particular as regards the names of officials or third-party staff not occupying any senior management position.

4.6. The third, fourth and fifth ranks were occupied by the exceptions pertaining to the protection of commercial interests (13.1%), international relations (7.4%) and court proceedings and legal advice (4.9%).

5. Complaints to the European Ombudsman

5.1. In 2015 the Ombudsman closed 16 complaints against the Commission's handling of requests for access to documents, of which only two with a critical remark.[13]

5.2. In 2015, the Ombudsman opened 11 new inquiries where access to documents was either the main or a subsidiary part of the complaint. This represents a significant decrease compared to the previous year, when 30 new inquiries were opened.

6. Judicial Review

6.1. As in previous years, important new case law was delivered in 2015.

6.2. The Court of Justice handed down two judgments on appeal where the Commission was a party to the proceedings.

In the *Stichting Corporate Europe Observatory* judgment[14], the Court of Justice clarified that there is no basis in EU law for the alleged presumption that the fact of dispatching a document to collective entities (such as trade associations) would imply per se that such document was actually intended for a large number of persons and should therefore be made public. In its *ClientEarth* judgment[15], the Court of Justice ruled out the possibility of relying on Article 4(1) and (4) of the Aarhus Convention in order to assess the legality of Article 4(2), third indent of Regulation 1049/2001 relating to the protection of the purpose of inspections, investigations and audits. The Court also confirmed that conformity studies which, at the time of the decision on access had already led to the opening of the pre-litigation stage of infringement proceedings under Article 258 TFEU, are covered by a general presumption of non- disclosure. For other studies, a case-by-case analysis is required in order to assess whether those studies could be fully disclosed or not.

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13 Two cases closed with a critical remark: 2014/0685/MHZ and 2013/2004/PMC. 14 cases closed without further action: 2015/0900/JAS, 2015/0119/PL, 2014/1777/PL, 2014/1716/PMC, 2014/1506/KM, 2014/1457/KM, 2014/1456/KM, 2014/1421/PMC, 2014/1258/KM, 2014/0895/PMC, 2014/0648/MMN, 2013/6/OI, 2013/0181/AN and 2012/2287/VL. For details on each case refer to http://www.ombudsman.europa.eu/en/cases/home.faces.

14 C-399/13 P – Stichting Corporate Europe Observatory v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=164729&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1216880).

15 C-612/13 P – ClientEarth v Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=165903&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1217623).

6.3. As for the General Court, it handed down eight judgments related to the right of access to documents where the Commission was a party to the proceedings.

Regarding audit procedures, the General Court confirmed that, as long as such a procedure is ongoing, the documents forming part of the audit file manifestly fall in their entirety under the exception of Article 4(2), third indent of Regulation 1049/2001 relating to the protection of the purpose of inspections, investigations and audits, without it being necessary to proceed to a concrete and individual examination of each document[16].

With regard to Article 4(2), second indent of Regulation 1049/2001 relating to the protection of legal advice and court proceedings, the General Court considered that written submissions lodged before the European Union Courts are not excluded, by virtue of the fourth subparagraph of Article 15(3) TFEU, from the right of access to documents[17]. In this respect, the European Commission lodged an appeal against this judgment that is ongoing (see case C-213/15 P mentioned under point 6.8).

With regard to notification procedures laid down by Directive 98/34, the General Court held that such procedures do not count as an investigation within the meaning of Article 4(2), third indent of Regulation 1049/2001[18]. France, with the support of the European Commission as intervener, introduced an appeal against this judgment (see case C-331/15 P mentioned under point 6.8).

As to the qualification of databases as documents, the General Court confirmed an earlier ruling to the effect that parts of an electronic database only constitute a document in the sense of Regulation 1049/2001 if the data can be extracted through a normal or routine search[19]. This judgment has been appealed by the applicant (see case C-491/15 P mentioned under point 6.8).

Regarding the exception of Article 4(3), pertaining to the protection of the decision-making process, the General Court ruled that there is a general presumption of non-disclosure of (draft) impact assessments and related documents, including opinions of the Regulatory Scrutiny Board, at least as long as the Commission has not adopted its proposal or decided that it is not

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16 T-480/11 – Technion and Technion Research & Development Foundation v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=164251&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1216558).

17 T-188/12 – Breyer v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=162573&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1217873).

18 T-402/12 – Schlyter v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=163724&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1218137 .

19 T-214/13 – Typke v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=165450&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1218458).

appropriate to submit a policy initiative[20] (judgment currently under appeal under case C-57/16 P).

Furthermore, the General Court handed down two judgments regarding the general presumptions of non-disclosure applying to State aid[21] and merger[22] files, and one judgment regarding the possibility to invoke a general presumption for documents exchanged under the information exchange arrangement within the network of public authorities ensuring compliance with the EU competition rules, even after the definitive closure of the proceedings conducted by the national competition authority[23].

6.4. The General Court handed down one judgment on an appeal against a decision of the Civil Service Tribunal where the Commission was a party to the proceedings[24]. In this judgment, it ruled that questions asked in staff competitions fall under the presumption of non-disclosure derived from the protection of the decision-making process in the meaning of Article 4(3), and more specifically from specific provisions in the Staff Regulations protecting the confidentiality of staff Selection Boards. The General Court handed down one order in a proceeding for interim measures where the Commission was a party to the proceedings. It suspended the decision of the Commission, by which it granted access to two documents emanating from the French authorities, which had been sent to the Commission in accordance with the procedure laid down in Directive 98/34/EC (technical standards)[25]. In one case where the Commission was a party to the proceedings, the General Court found that there was no need to adjudicate as all the documents covered in the initial application have been sent to the applicant[26].

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20 T-424/14 & T-425/14 – ClientEarth v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=171521&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1219403).

21 T-456/13 - Sea Handling SpA v European Commission (currently under appeal: C-271/15 P) (http://curia.europa.eu/juris/document/document.jsf?text=&docid=163182&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=132413).

22 T-677/13- Axa Versicherung AG v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=165590&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=18737).

23 T-623/13 – Unión de Almacenistas de Hierros de España v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=164249&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1218702).

24 T 515/14 P & T 516/14 P - Christodoulos Alexandrou v European Commission (http://curia.europa.eu/juris/document/document_print.jsf?doclang=FR&text=&pageIndex=0&part=1&mode=lst&docid=171421&occ=first&dir=&cid=127813).

25 T-344/15 R – French Republic v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=166741&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=19343).

26 T-250/14 - European Environmental Bureau (EEB) v European Commission (http://curia.europa.eu/juris/document/document.jsf?text=&docid=164286&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=127813).

6.5. Ten new cases were brought before the General Court against Commission decisions under Regulation (EC) No 1049/2001[27].

6.6. Four new appeals were brought before the Court of Justice against judgments of the General Court where the Commission was a party to the proceedings[28].

7. Conclusions

In 2015, the Commission continued to put into practice its committment to enhanced transparency, as illustrated by its systematic publication of information on who meets its political leaders and senior officials; enhanced access to and publication of documents relating to the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the United States; an improved version of the Transparency Register; and progressive implementation of the Better Regulation Agenda.

With regard to the right of access to documents, the Commission continued to pro-actively publish a wide range of information and documents on its various, legislative and non-legislative activities. The right to access documents upon request, subject to specific, limited exceptions, as provided by the Treaties and Regulation 1049/2001, continued to be an important instrument through which the Commission delivers on its transparency commitment. The Commission's objective is to respond to such requests in the most timely and resource-efficient manner possible.

If the number of confirmatory applications remained approximately the same, the number of access-to-documents requests at the initial stage increased significantly from 6,227 in 2014 to 6,752 in 2015, confirming the overall, upward trend since Regulation 1049/2001 came into force. This demonstrates that citizens are making a steadily increasing and active use of their right to request documents from the Commission.

The Commission remains by far the institution handling the largest number of access-to-documents requests. The volume of access requests and the high disclosure rate has resulted in a large number of documents being made available, in addition to the extensive documentation already available on the Commission's numerous webpages.

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27 T-51/15 - PAN Europe v European Commission, T-110/15 - International Management Group v European Commission, T-210/15 - Deutsche Telekom v European Commission, T-264/15 - Gameart v European Commission, T-344/15 - French Republic v European Commission, T-448/15 – EEB v European Commission, T-451/15 – AlzChem AG v European Commission, T-514/15 - Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych v European Commission, T-611/15 - Edeka-Handelsgesellschaft Hessenring v European Commission, and T-727/15 - Justice & Environment v European Commission.

28 C-213/15 P - European Commission v Breyer, C-271/15 P - Sea Handling v European Commission, C-331/15 P –French Republic v Schlyter, and C-491/15 P - Typke v European Commission.